

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 589 of 1985

To

FIRST APPEAL No 596 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HIRALBEN BHURABHAI GADHAVI

Versus

PANCHMAHAL STONE MILLING IND.

Appearance:

MR BHARAT T RAO for appellants
MR DF AMIN for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 17/02/2000

COMMON ORAL JUDGEMENT

1. All these eight Appeals arise out of the orders

passed by the Civil Judge (S.D.) and Workmen's Compensation Commissioner, Godhra in Compensation Cases Nos.1/84 to 8/84 decided on 7.11.84 whereby the Applications claiming compensation had been rejected on the ground of limitation. In all these matters, the Applications claiming compensation under Workmen's Compensation Act were filed by the legal heirs of the deceased workmen on 12.3.84 stating that the concerned workmen suffered disease of silicosis while working with the Panchmahalas Stone Milling Industry. On account of the crushing of stones in the said Stone Milling Industry the concerned workman contracted the disease of silicosis and as a result of which they died in the year 1979. Whereas the Applications were filed in the year 1984, the condonation of delay was sought and for that purpose separate Applications for condonation of delay were filed stating that the Applications were actually required to be filed within a period of 2 years but the applicants were not aware with regard to the period of limitation, they were ignorant about the relevant law and the persons, who were working in the said Industry, had told them that such Applications can be moved within three years and believing the same, they have filed the Applications now in the year 1984 and, therefore, the delay may be condoned. All these Applications seeking condonation of delay have been rejected by the Workmen's Compensation Commissioner on the ground that the Applications had been filed in the year 1984 whereas the cause of action had arose way back in 1979 when the concerned workmen expired. The Workmen's Compensation Commissioner has recorded that neither the date of death of any of the workmen has been given nor it has been given out in the main Applications as to from which date to which date the concerned workmen had served, on which date he contracted the disease and the Applications were totally vague with regard to the disease of silicosis or the treatment taken. Workmen's Compensation Commissioner has recorded that even if it is taken that the present applicants believed that the limitation for filing such Applications was three years, the Applications had in fact been filed in 1984 while the deaths had taken place in the year 1979. All these Applications were hopelessly time barred.

2. Mr.B.T.Rao on behalf of the applicants has submitted that the applicants were all poor and illiterate persons, they did not know the provisions of law, they were absolutely ignorant and in the facts and circumstances of these cases, even if the Applications have been filed beyond the period of two years and even if the same had been filed after five years of the date

of the deaths, without any particulars regarding the disease or the date of deaths etc., the delay should have been condoned and hence the present impugned orders be set aside and the matters may be remanded back to the Workmen's Compensation Commissioner.

3. Mr.D.F.Amin appearing on behalf of the respondent has contested these Appeals and has submitted that it is a case in which even it was not pointed out in any of the Applications as to what was the actual period of delay and in absence of the dates of deaths, even the date of the commencement of the period of limitation could not be determined. No particulars have been given even with regard to the period for which the concerned workmen had served. It is wholly vague to say that they had served for a period of four years or so but which was that period of four years and from which date to which date they had worked has also not been given. On the basis of such vague claim and in absence of any particulars in the Applications seeking condonation of delay, it could not be said in the facts and circumstances of these cases that the applicants were prevented by any reasonable and sufficient cause from filing the claim Applications within the time prescribed under the law. He has also submitted that all these stereotype Applications were filed in the year 1984 without any basis.

4. I have heard learned counsel for both the sides. S.10 of the Workmen's Compensation Act, 1923 provides for the notice and claim. The relevant part of the same is reproduced as under:-

"10. Notice and claim.- (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death."

5. It is, therefore, clear that such claim can be entertained only if it is preferred within a period of two years of the occurrence of the accident or in case of death, within two years from the date of death. In the instant cases, whereas the deaths had taken place in the year 1979, the Applications have been filed in the year 1984 i.e. precisely after a period of nearly five years and certainly much more period than the period of two years. Even if the say of the applicants is believed that some persons working in the Industry had told that

claim Applications could be filed within three years, yet the Applications were time barred as the same have been filed after the expiry of the period of three years from the year 1979 in which the deaths may have taken place, although no date of death has been given. The delay in such matters cannot be condoned merely on the ground of the bald statement that the applicants were poor and illiterate persons and were ignorant of law. In the opinion of this Court, the Workmen's Compensation Commissioner had rightly come to the conclusion that in the instant cases, it cannot be said that the applicants were prevented by any reasonable and sufficient cause from filing the present Applications within time. Whereas the applicants failed to show any reasonable and sufficient cause for not filing the Applications within time, Civil Judge (S.D.) working as Workmen's Compensation Commissioner has rightly rejected the Applications for condonation of delay in these Claim Applications and the impugned orders do not suffer from any illegality so as to warrant any interference by this Court. At one stage, this Court had also considered the question that by taking a liberal view the matters may be remanded back, but having gone through the Applications claiming compensation itself, it is found that it will be a plain and simple exercise in futility to remand the matter now after 15 years of the date of the impugned orders and after about 21 years from the year of the deaths. The Applications, as had been filed claiming compensation, are absolutely vague. No particulars have been given with regard to the disease and the deaths or the treatment taken for the disease or with regard to the period of service and, therefore, I find that no useful purpose can be served even by remanding the matter at this stage when whatever evidence could be made available at the time when the Applications were filed must also have withered away by this time and no party now will be in a position to procure and produce any evidence for the purpose of the decision of the Applications on merits.

6. For the reasons aforesaid, all these eight Appeals fail and the same are hereby dismissed. In the facts and circumstances of these cases, no order as to costs.